Supreme Court, U.S.
FILED

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OFFICE OF

No. ——

IN THE

Supreme Court of the United States

LOYD BREWER, *Pro Se*,
Petitioner,

v.

MICHAEL DUNAWAY, DIRECTOR, FARM SERVICE AGENCY OF UNITED STATES DEPARTMENT OF AGRICULTURE
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

LOYD BREWER
820 Charlyne
Brinkley, AR 72021
(870) 734-2893

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTIONS PRESENTED

1. Is CFR 1951-S Constitutional and if so what authority does it contain?
2. Can a five year contract, that complies with all the rules and regulations of CFR 1951-S when made, between the farmer and the USDA be changed by a procedural change in CFR 1951-S during the five year life of the contract.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

MICHAEL DUNAWAY, DIRECTOR, FARM SERVICE AGENCY OF UNITED STATES DEPARTMENT OF AGRICULTURE
AND
TRAVIS O. LEE AND KATHLEEN D. LEE HUSBAND AND WIFE

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Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was March 28, 2001.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date May 22, 2001 and a copy of the order denying rehearing appears at Appendix B.

The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Is the Department of Agriculture, acting through Farmers Home Administration meeting its' responsibility of giving previous owners of foreclosed property "their right of first refusal" as required by the *Farm Credit Act of 1987, volume 2*", by giving the previous owners the right to purchase the property at some appraised value, rather than the price the property is actually sold?

STATEMENT OF THE CASE

The 1987 Farm Credit Act and as amended which gave birth to CFR 7, 1951-S was the result of The United States Congress recognizing the farm disaster that started with the 1985 crop year. 1987 Farm Credit Act gave the United States Department of Agriculture, acting through Farmers Home Administration, now Farm Service Agency, the mission of "Keeping the farmers on the farm".

This case involves two tracts of farmland and a farm family of a father and son. Farmers Home Administration declared the father ineligible for 1951-S relief after assuring the father by letter that if the father would deed the farms to USDA then the father would be eligible. (Subject letter is part of the record at Appendix C). Farmers Home Administration never gave any reasons for declaring the father ineligible. Farmers Home after declaring the father ineligible for long-term low interest loans, these loans being the first part of 1951-S procedure, did then rent the farms to the father for five years.

The inability of the father not being able to secure low interest long-term loans was one of the factors that caused the father to have to file bankruptcy. At the end of the five years USDA was to allow the family to purchase the two farms. The father because of the bankruptcy could not repurchase the farms and the son planned and did purchase one of the farm tracts. The son used almost identical offers of purchase on the two tracts. The son used a dollar above the highest and best cash offer the dollar above the highest and best cash offer was the accepted bid being used by farmers with loans to Federal Land Bank. Farmers Home Administration allowed the son to purchase one farm tract, but ruled the dollar above the highest bid was not a legal offer on the tract. Farmers Home Administration has yet to give any substantive reason why or how a dollar above the best offer is legal bid when to Farmers Home Administration advantage and not a legal bid at other times. The question of legality of the dollar bid is not the question. We contend that either both bids are legal or neither bid is legal.

Farmers Home Administration also again never followed their own procedure and did not keep the property in inventory for three years as required under subparts B and C of part 1955, 7 C.F.R. USDA never followed their own procedure when selling subject property by advertising the property in the local newspaper with the incorrect legal description.

The Federal District Court did grant the son standing and allowed the son to file as a co-plaintiff. The Appeals Court did state that this case had been decided in the Bankruptcy Court. The son has never been in bankruptcy.

This case is being filed *pro se* because the attorney of record, Eugene C. Fithugh was removed from the case. Another Attorney Randy Sutterfield was retained and represented the families interest until Mr. Sutterfield had a visit from an USDA Office of Inspector General, Mr. Raines. Mr.

Raines of the office of Inspector General did state to Mr. Sutterfied that the case was a criminal case. Mr. Sutterfield did inform the plaintiff that he should seek a criminal attorney. Letter from Mr. Sutterfield in the file.

This case has been a perfect example of USDA employees acting on their own desires and certainly not following their own procedure.

REASONS FOR GRANTING THE PETITION

1. Government should be of laws rather than men.

USDA employees did not follow their own procedure, but rather the employees followed their own desires. The employees never tried to rectify their own mistakes, but believed the reverse of the old adage that two wrongs do not make a right. This petition should be granted because the plaintiffs are not asking for more than what the law granted, no more than what was granted, but only in part.

USDA employees in an effort to hid and conceal did not file the deed to the subject property until some three weeks after the sale of the property to the co-defendants. USDA did not advertise for sale the correct property and did not have legal ownership to the property when the sale was conducted. USDA held or hid the deed that plaintiffs had given them for six years. If the deed was not recorded did USDA have authority to lease the farm tracts back to the family?

CONCLUSION

The petition for a writ of certiorari should be granted.

The employees of USDA, Farm Credit Services, were certainly not prepared for the absolute contradictory way of thinking of the 1985 Farm Credit Act. A debtor being able to deed farmland to USDA in return for USDA forgiving all or part of the farmer's debt owed USDA and then the farmer leasing the farm for five years and being able to purchase the

farm at market value at the end of five years and the farmer having first right of refusal to repurchase the farm if the farmer had not already purchased the farm; went against all the training that most Farm Credit Services had ever received. In a nutshell the above was what Congress had enacted into law under the 1985 Farm Credit Act. In the beginning USDA employees did not afford the eligible farmer these rights. The Bankruptcy Court in *Jarrett Ranches, Inc. D.S.D. 1989*, 107 B.R. 969 ruled that Debtor could not give a wavier of his rights to have his debt restructured. The Bankruptcy Court in *Jarrett Ranches, Inc. D.S.D. 1989*, 107 B.R. 969 ruled Farm Credit Bank under Farm Credit Act was required to sell farm as a whole and could not offer individual parcels. In subject case farm was sold in two parcels. The required public notice did not contain the correct legal description. The debtor was promised if he would deed his farm to USDA then he would be offered all kind of rights.

A dollar bid above the highest and best bid was used in bidding on the tracts. One dollar above the highest and best bid was accepted, one was rejected as being an illegal bid, both bids were all cash at closing. We as lay people are not at this point arguing legality of a dollar bid above the highest and best bid, being a legal or illegal bid. We are arguing is a dollar bid above the highest and best bid legal in one case, then illegal in the next. The record shows other cases where farmland was auctioned at a dollar above the highest and best bids and was accepted. We understand the closeness of the District Courts and The United States Attorney when a *pro se* case is involved. We understand the significance of United States District Judge Moody when after our attorney was asked to leave the case allowed another attorney to take over. Mr. Randy Sutterfield replaced our original attorney. Mr. Sutterfield remained our attorney until a USDA, OIG, officer; Mr. Raines went to Mr. Sutterfield and told Mr. Sutterfield that this was a

criminal case. Mr. Sutterfield is not a criminal lawyer and requested to be released from the case. We pray The Court to return the farm to the family as provided in 1951-S when USDA received title.

Respectfully submitted,

LOYD BREWER
820 Charlyne
Brinkley, AR 72021
(870) 734-2893

August 15, 2001

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
THOMAS F. EAGLETON COURT HOUSE
Room 24.329
111 S. 10th Street
St. Louis, Missouri 63102

VOICE (314) 244-2400
ABBS (800) 652-8671
www.ca8.uscourts.gov

MICHAEL E. GANS
Clerk of Court

March 28, 2001

Loyd Brewer
820 Charlene
Brinkley, AR 72021

Re: 99-3796 Loyd Brewer vs. Travis O. Lee
Re: 00-1678 Alan Brewer vs. Travis Lee

Dear Sir:

The court today issued an opinion in this case. Judgment in accordance with the opinion was also entered today.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc *must* be received in the clerk's office within 45 days of the date of the entry of judgment. No grace period for mailing is allowed, and the date of the postmark is irrelevant. Any petition for rehearing or petition for rehearing en banc which is not received within the 45 day period for filing permitted by FRAP 40 may be denied as untimely.

(5148-010199)

Sincerely,

/s/ *Michael E. Gans*
MICHAEL E. GANS
Clerk of Court

paw

Enclosure(s)

cc: Loyd Brewer
Alan Brewer
Steven W. Elledge
E. Fletcher Jackson
Jim McCormack

District Court/Agency Case Number(s): H-C-99-78

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 99-3796
No. 00-1678

LOYD BREWER,
Appellant/Plaintiff,
ALAN BREWER,
Appellant/Plaintiff,
vs.

TRAVIS O. LEE, HUSBAND; KATHLEEN D. LEE, Wife; THE FARM SERVICE AGENCY, BY ITS DIRECTOR, MICHAEL DUNAWAY,
Appellees.

Order Denying Petition for Rehearing and for Rehearing En Banc

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ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

May 22, 2001

Order Entered at the Direction of the Court:

/s/ Michael E. Gans
MICHAEL E. GANS
Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX C

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF GENERAL COUNSEL
3201 Federal Office Building
Little Rock, AR 72201

October 15, 1990

REFERENCE:
BOWEN
(501) 378-5246

Eugene C. Fitzhugh
Attorney at Law
7200 Geyer Springs Road
Little Rock, AR 72209

Dear Gene:

Subject: Loyd Brewer, Bankruptcy No. 90-20152M

I am in receipt of the letter that you wrote to Mac Dodson on October 5, 1990. I will attempt to address some of your concerns, hopefully, for the last time. At the outset, let me state that it is our position that your client received each and every notice to which he was entitled under 7 C.F.R. § 1951-S. We are prepared to prove this if pressed on this point.

Secondly, once your client deeds the property back to FmHA, then he is eligible for any of a number of preservation rights under 1951-S. However, while I can assure you that Mr. Brewer will receive all of the rights due him and similarly situated individuals, FmHA cannot pre-approve your proposal of October 5, 1990. Further in that regard, it is my understanding that while Mr. Brewer would certainly be eligible to apply for "leaseback/buyback", he will not be able to buy it back over a five year period. He will be able to lease it for a period of time not greater than five years at the

prevailing rent in the area with an option to buy this property at any time during that period. Finally, "net recovery buyout" is not an option in this case. Mr. Brewer does not qualify for "net recovery buyout". Accordingly, we cannot sell him the equipment in question at a "net recovery figure". FmHA is not allowed to split security in this fashion under its regulations. Accordingly, he will not be able to lease the real properly while buying the chattel property at a "net recovery figure".

You should know that we intend to file a Motion to Dismiss this matter for the reason that your client's actions in this regard represent a material default of his confirmed Plan. We are prepared to prove that your client has received all of the procedural safeguards owed to him under the Act. We insist that your client live up to his end of the bargain. If he does not, then we shall have no alternative but to attempt to exercise our creditors remedies to the fullest extent of the law.

Sincerely,

CLAUDE W. SKELTON
ASSOCIATE REGIONAL ATTORNEY

BY: /s/ Arthur Paul Bowen
ARTHUR PAUL BOWEN
ATTORNEY

cc: Mac Dodson, AUSA/ED/AR

State Office, FmHA/AR/FP

Monroe County Supervisor, FmHA

APPENDIX D

§ 2219a. Right of first refusal

(a) General rule

Agricultural real estate that is acquired by an institution of the System as a result of a loan foreclosure or a voluntary conveyance by a borrower (hereinafter in this section referred to as the "previous owner") who, as determined by the institution, does not have the financial resources to avoid foreclosure (hereinafter in this section referred to as "acquired real estate") shall be subject to the right of first refusal of the previous owner to repurchase or lease the property, as provided in this section.

(b) Application of right, of first refusal to sale of property

(1) Election to sell and notification

Within 15 days after an institution of the System first elects to sell acquired real estate, or any portion of such real estate, the institution shall notify the previous owner by certified mail of the owner's right—

(A) to purchase the property at the appraised fair market value of the property, as established by an accredited appraiser; or

(B) to offer to purchase the property at a price less than the appraised value.

(2) Eligibility to purchase

To be eligible to purchase the property under paragraph (1), the previous owner must, within 30 days after receiving the notice required by such paragraph, submit an offer to purchase the property.

(3) Mandatory sale

An institution of the System receiving an offer from the previous owner to purchase the property at the appraised

value shall, within 15 days after the receipt of such offer, accept such offer and sell the property to the previous owner.

(4) Permissive sale

An institution of the System receiving an offer from the previous owner to purchase the property at a price less than the appraised value may accept such offer and sell the property to the previous owner. Notice shall be provided to the previous owner of the acceptance or rejection of such offer within 15 days after the receipt of such offer.

(5) Rejection of offer of previous owner

(A) Duties of institution

An institution of the System that rejects an offer from the previous owner to purchase the property at a price less than the appraised value may not sell the property to any other person—

(i) at a price equal to, or less than, that offered by the previous owner; or

(ii) on different terms and conditions than those that were extended to the previous owner,

without first affording the previous owner an opportunity to purchase the property at such price or under such terms and conditions.

(B) Notice

Notice of the opportunity in subparagraph (A) shall be provided to the previous owner by certified mail, and the previous owner shall have 15 days in which to submit an offer to purchase the property at such price or under such terms and conditions.

(c) Application of right of first refusal to leasing of property

(1) Election to lease and notification

Within 15 days after an institution of the System first elects to lease acquired real estate, or any portion of such real estate, the institution shall notify the previous owner by certified mail of the owner's right—

(A) to lease the property at a rate equivalent to the appraised rental value of the property, as established by an accredited appraiser; or

(B) to offer to lease the property at a rate that is less than the appraised rental value of the property.

(2) Eligibility to lease

To be eligible to lease the property under paragraph (1), the previous owner must, within 15 days after receiving the notice required by such paragraph, submit an offer to lease the property.

(3) Mandatory lease

An institution of the System receiving an offer from the previous owner to lease the property at a rate equivalent to the appraised rental value of the property shall, within 15 days after the receipt of such offer, accept such offer and lease the property to the previous owner unless the institution determines that the previous owner—

(A) does not have the resources available to conduct a successful farming or ranching operation; or

(B) cannot meet all of the payments, terms, and conditions of such lease.

(4) Permissive lease

An institution of the System receiving an offer from the previous owner to lease the property at a rate that is less than the appraised rental value of the property may accept such offer and lease the property to the previous owner.

(5) Notice to previous owner

An institution of the System receiving an offer from the previous owner to lease the property at a rate less than the appraised rental value of the property shall notify the previous owner of its acceptance or rejection of the offer within 15 days after the receipt of such offer.

(6) Rejection of offer of previous owner

(A) Duties of institution

An institution of the System rejecting an offer from the previous owner to lease the property at a rate less than the appraised rental value of the property may not lease the property to any other person—

(i) at a rate equal to or less than that offered by the previous owner; or

(ii) on different terms and conditions than those that were extended to the previous owner, without first affording the previous owner an opportunity to lease the property at such rate or under such terms and conditions.

(B) Notice

Notice of the opportunity described in subparagraph (A) shall be given to the previous owner by certified mail, and the previous owner shall have 15 days after the receipt of such notice in which to agree to lease the property at such rate or under such terms and conditions.

(d) Public offerings

(1) Notification of previous owner

If an institution of the System elects to sell or lease acquired property or a portion thereof through a public auction, competitive bidding process, or other similar public offering, the institution shall notify the previous owner, by certified mail, of the availability of the property. Such notice shall contain the minimum amount, if any, required to qualify a bid as acceptable to the institution and any terms and conditions to which such sale or lease will be subject.

(2) Priority

If two or more qualified bids in the same amount are received by the institution under paragraph (1), such bids are the highest received, and one of the qualified bids is offered by the previous owner, the institution shall accept the offer by the previous owner.

(3) Nondiscrimination

No institution of the System may discriminate against a previous owner in any public auction, competitive bidding process, or other similar public offering of property acquired by the institution from such person.

(e) Term or condition

For the purposes of this section, financing by a System institution shall not be considered to be a term or condition of a sale of acquired real estate.

(f) Financing

Notwithstanding any other provision of this section, a System institution shall not be required to provide financing to the previous owner in connection with the sale of acquired real estate.

(g) Mailing of notice

Notwithstanding any other provision of this section, each certified mail notice requirement in this section shall be fully satisfied by mailing one certified mail notice to the last known address of the previous owner.

(h) State laws

The rights provided in this section shall not diminish any such right of first refusal under the law of the State in which the property is located.

(i) Applicability

This section shall not apply to a bank for cooperatives.

(Pub.L. 92-181, Title IV, § 4.36, as added Pub.L. 99-205, Title III, § 306, Dec. 23, 1985, 99 Stat. 1709, and amended Pub.L. 100-233, Title I, § 108, Jan. 6, 1988, 101 Stat. 1582; Pub.L. 100-399, Title I, § 104, Aug. 17, 1988, 102 Stat. 990.)

APPENDIX E

SATTERFIELD LAW FIRM
6520 Baseline Road, Suite A
Little Rock, Arkansas 72209

OFFICE: (501) 562-7674

G. RANDOLPH SATTERFIELD FACSIMILE: (501) 562-2418

December 17, 1997

Mr. Loyd Brewer
820 Charlyne
Brinkley, Arkansas 72021

RE: Brewer vs. Lee, *et al.*
Federal District Court No. HC-97-112

Dear Loyd:

Conrad Raines, an inspector with the Office of Inspector General contacted me today concerning his attempt to interview you and his interview with your son conducted yesterday. He advised that he spoke with you and knew that you had counsel in this case and waned to make contact with nee to arrange a time for an interview. I asked him what the nature of the interview was, and he said he was needing information to conduct an investigation for the Justice Department from Washington, DC concerning your chapter 12 bankruptcy proceeding and your claim of 1951 S Rights. I asked him why the Justice Department is involved from Washington, DC and he advised that the local U.S, Attorney, Paula Casey, had recused from the investigation. I asked him why she recused and he indicated that she recused because Mr. Fitzhugh was involved in a Whitewater related case and she could not investigate this case. I then inquired whether this was a criminal investigation and he confirmed that is was indeed a criminal investigation.

In light of his advice that this was a criminal investigation, and that it involved your chapter 12 bankruptcy proceeding for which Mr. Fitzhugh provided you with representation, and the fact that the local U.S. Attorney recused from the investigation put me in a position of not being able to give you legal advice concerning any potential criminal investigation. I advised the inspector that I would advise you that you should seek separate counsel for any criminal investigation, including the decision whether or not to speak with the inspector, because I would not be able to give you advise concealing any potential criminal matter if it involved an investigation of Mr. Fitzhugh's representation of you in the bankruptcy proceeding. In other words, I would have a conflict of interest in representing either you or Mr. Fitzhugh in a criminal investigation.

Therefore, I am advising you that you should seek separate counsel concerning any criminal investigation since I have a conflict of interest, having presently being the attorney for Mr. Fitzhugh in another matter.

Mr. Raines telephone number locally is 324-5112, in Little Rock, but he advises that he will be leaving tomorrow back to his office in Temple, Texas, at telephone number (254) 298-1351. He also has a pager number of 1-800-752-3307 in which you have to give an i.d. number of 6182322.

Loyd, this inspector advised me that the Justice Department was looking into whether or not your chapter 12 bankruptcy plan was different from your argument in bankruptcy court and the manner you proceeding in claiming that your bankruptcy plan would extend through 1997. It was difficult for me to understand what he was trying to say but I did understand that the Government maintains that you have no 1951-S Rights since you were not under that program. The inspector stated that you never qualified for the 1951-S Rights and you had made an agreement with the Government outside the 1951-S Rights when the Government wrote off in

excess of $100,000.00 in debt you owed them in exchange for your deed on the 40 acres. The inspector said you never qualified for the 1951-S Rights.

The inspector also said that when he interviewed your son that your son told him that you knew that you had a right to purchase the 40 acres even after your lease expired but your son made a choice not to buy the 40 acres but instead bought the 80 acres because it had ponds which were more valuable than the 40 acres. The inspector also said that the bid must be an exact figure and that your son was told that when he bid a $1.00 over the highest bid. The Government really seems upset about you claiming that you are entitled to the 40 acres since they forgave $100,000,00 in debt in exchange for the property, an amount the inspector said was far greater than the value of the property to begin with. The inspector also said that the Chapter 12 Bankruptcy Plan matches the lease that was for the period of 1990-1995, and no where can he find any bankruptcy plan that included any term longer than the 1995 five year bankruptcy plan.

I enclose a copy of the Notice of Appeal that you asked me to file to protect your rights in the 8th Circuit. I also enclose a copy of a Motion for Summary Judgment filed by the Government in your civil case concerning the quiet title action that was removed from state court to federal court. In light of these recent events, I urge you to consult criminal counsel immediately to get a proper perspective on how you should proceed.

Please call it you have any questions.

Very truly yours,

SATTERFIELD LAW FIRM
/s/ Randy Satterfield
G. RANDOLPH SATTERFIELD

cc: Mr. Eugene Fitzhugh
Attorney at Law

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

[Filed Aug. 31, 1999]

LOYD BREWER,

Plaintiff,

v.

TRAVIS O. LEE and KATHLEEN D. LEE Husband and Wife; and FARM SERVICE AGENCY, by its director, MICHAEL DUNAWAY,

Defendants.

ORDER GRANTING MOTION TO DISMISS

Plaintiff's petition to quiet title evolves from a 1989 Chapter 12 bankruptcy dispute. Plaintiff filed bankruptcy under Chapter 12 on December 5, 1989. The Farm Service Agency ("FSA") was listed among the creditors to the bankruptcy and was duly notified of the filing. The FSA objected to the confirmation of the Chapter 12 plan, but through negotiations between Plaintiff and the FSA, an agreement was reached and Plaintiff filed a modified plan in accordance with that agreement.

The modified plan, confirmed by the bankrpurcy court in 1990, provided for sale by FSA of Plaintiff's farm machinery and transfer to FSA of the real estate, a parcel of farm land located in Monroe County, Arkansas, already pledged to them by Plaintiff pursuant to a formal loan agreement. The plan further provided for the Plaintiff to continue farming the real estate in exchange for rent of $3,000.00 annually.

In 1992, Plaintiff was asked by an agent for FSA to sign a five-year lease agreement. The lease was backdated to reflect

that the lease began in 1990 and ran through 1995. The FSA agent told Plaintiff that he needed to sign the backdated lease agreement because the FSA had lost the papers on his old rental agreement, and they needed the new papers to comply with his bankruptcy plan. Plaintiff signed the backdated lease which set a definite term of five years.

In 1996, Plaintiff was notified that the real estate was to be advertised for sale and that he had fifteen (15) days to make a bid on the property. Additionally, FSA stopped payment to Plaintiff of his government deficiency program check for 1996 because this payment was based upon Plaintiff renting the property and it was FSA's position that his lease had expired in 1995.

It was Plaintiff s position that the confirmed plan called for a $3,000.00 annual rent to be paid by the debtor and created a tenancy from year to year. Further, Plaintiff argued that the backdated 1992 lease with its five-year term altered the 1990 confirmed bankruptcy plan, thus violating the provisions of the automatic stay.

Plaintiff filed several motions with the bankruptcy court: a motion asking the Government to show cause why it should not be held in contempt for violating the provisions of the automatic stay, a motion asking the court to void the deed and set aside the conveyances, and a motion to compel the FSA to pay Plaintiff for participation in the Production Flexibility Program, or government deficiency program. At the conclusion of a hearing on these motions, the bankruptcy court found that Plaintiff's Chapter 12 bankruptcy plan did not give Plaintiff the option to repurchase his farm land and it did not override Farmers Home Administration, FSA regulations as argued by the Plaintiff. The court found that the lease signed by Plaintiff was "not inconsistent with the plan or the testimony interpreting the plan." Further, the court stated that there was no evidence of contempt by the Government. The Government had acted properly under the terms of the lease

and the plan. The court found that the Plaintiff was given the option by the FSA to repurchase the property and failed to do so. There was no reason to set aside the conveyance of the land by Plaintiff to the FSA. The court also denied Plaintiffs motion to compel the FSA to pay Plaintiff for participation in the Production Flexibility Program because the Government had a valid reason for refusal to make the payments.

Plaintiff appealed the bankruptcy court's rulings in this Court (H-C-97-21) on March 6, 1997. The Court affirmed the bankruptcy court's findings. Plaintiff further appealed to the Eighth Circuit Court of Appeals (Case No. 98-1118) which also affirmed the bankruptcy court's findings and conclusions. Plaintiff then filed a petition to quiet title to the farm land in chancery court which was removed by the Government on November 24,1997. The case (H-C-97-112) was dismissed without prejudice on June 24, 1998 for failure to prosecute.

On April 23, 1999, Plaintiff (acting *pro se*) filed this Petition to Quiet Title, Injunction and Other Relief in Monroe County Chancery Court. Again, the Government removed the action to this Court. Plaintiff now asks the Court to confirm and quiet title to the farm land he previously owned in Monroe County. Plaintiff asks the Court to cancel any potential adverse claims to this property, to grant a temporary and permanent injunction against the Defendants to prevent them from filing criminal charges against the Plaintiff regarding this action, and for judgment declaring Plaintiff's entitlement to certain Farm Service Agency ("FSA") proceeds obtained from sale of crops cultivated from the land in dispute. Plaintiff concedes in his petition that this land has been the subject of litigation in the United States Bankruptcy Court, the United States District Court for the Eastern District of Arkansas, and the Eighth Circuit Court of Appeals.

Defendant FSA seeks dismissal of the action because the issues have been fully litigated in a court of competent

jurisdiction and, therefore, the doctrines of res judicata and collateral estoppel apply.

After a thorough review of the record including the Court's Order of November 17, 1997, and the Order of the Eighth Circuit Court of Appeals filed November 19, 1998, the Court finds that the majority of the issues involved in the instant case are identical to the issues previously resolved by the courts. However, Plaintiff has supplemented his previous claims with an adverse possession claim and a request for injunctive relief. For the reasons set forth below, all of Plaintiff's claims are dismissed.

I. Quiet Title and Government Payment

Plaintiff contends that title to the farm land in Monroe County should be confirmed and vested in him because: (1) the notice of the land sale to Defendants Travis and Kathleen Lee (the "Lees") was improper because the notice contained an incorrect legal description of the land; (2) the FSA deemed an offer made by Plaintiff's son, Allen Brewer, of one dollar above the highest bid on the land to be improper; and (3) that the Lees' Quitclaim Deed is not valid because it is subject to all of Plaintiff's rights under C.F.R. 1951-S. Plaintiff also argues that he is entitled to the federal payment for crops he planted on the land in 1996.

"Res judicata bars relitigation of a claim if: (1) the prior judgment was rendered by a court of competent jurisdiction; (2) the prior judgment was a final judgment on the merits; and (3) the same cause of action and the same parties or their privies were involved in both cases." *Lane v. Peterson*, 899 F.2d 737, 741 (8th Cir.1990) (citing *Murphy v. Jones*, 877 F.2d 682, 684 (8th Cir. 1989)). The Eighth Circuit has adopted the Restatement's transactional approach to res judicata. Under this approach, "there may be some variance in the proof required for claims that are nonetheless the 'same claim' for res judicata purposes. The operative question in

each case is whether the claims arise out of the same nucleus of facts." *Id.* at 743. "Thus, where a plaintiff fashions a new theory of recovery or cites a new body of law that was arguably violated by a defendant's conduct, res judicata will still bar the second claim if it is based on the same nucleus of operative facts as the prior claim." *Id.* at 744.

Clearly, Plaintiff's petition is based on allegations which have been fully adjudicated before the bankruptcy court, the district court, and the Eighth Circuit. The courts had jurisdiction over the case, a final judgment on the merits was rendered, and the parties are the same or in privity. The Plaintiff has merely re-titled his cause of action as an action to quiet title. Accordingly, the Court finds that the instant quiet title action and the request for government payments for crops planted by Plaintiff in 1996 are based on the same nucleus of operative facts as Plaintiff's prior claims and, therefore, are barred by res judicata.

II. Adverse Possession

Plaintiff contends that he has remained in actual possession and acted as the owner of the land in dispute for seven (7) years prior to the filing of this action. As evidence, Plaintiff alleges that he executed a crop loan on soybeans planted on the property, and that Defendant Travis Lee requested Plaintiff's permission to hunt on this property in the fall of 1996.

"To establish title by adverse possession, the one claiming title bears the burden to prove that he had been in possession of the property continuously for more than seven years and that his possession was visible, notorious, distinct, exclusive, hostile, and with intent to hold against the true owner." *Ward v. Adams*, 66 Ark. App. 208, 989 S.W.2d 550, 551-52 (Ark. App. 1999) (citing *Moses v. Dautartas*, 53 Ark. App. 242, 922 S.W.2d 345 (Ark. App. 1996)).

It is well established in the record that Plaintiff was in lawful possession as lessee of the land from the Government for the period of 1990 to 1995. Plaintiff cannot state a claim for adverse possession against the Government. *U.S. v. California*, 332 U.S. 19, 67 S. Ct. 1657, 91 L. Ed. 1889 (1947). Plaintiff's alleged adverse possession must start at the end of his lease, i.e., November 10, 1995. However, seven years has not passed since Plaintiff's lease terminated. Accordingly, Plaintiff cannot prove a claim of adverse possession as a matter of law.

III. Injunctive Relief

Plaintiff asks the Court to grant a temporary and permanent injunction against the Defendants to prevent them from filing criminal charges against the Plaintiff for trespass on the land in dispute until the action can be heard in this Court. Based upon the Court's previous rulings, this claim is dismissed as moot.

For the reasons set forth above, Defendant's motion to dismiss (Docket #3) is granted.

IT IS SO ORDERED this 31st day of August, 1999.

/s/ James M. Moody
JAMES M. MOODY
United States District Judge

This document entered on Docket Sheet in compliance with Rule 58 and/or 79(a) FRCP on 8/31/99 by /s/ Illegible.

Supreme Court, U.S.
FILED

No. 01-313 AUG 15 2001

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

LOYD BREWER, *Pro Se*,
Petitioner,

v.

MICHAEL DUNAWAY, DIRECTOR, FARM SERVICE AGENCY OF UNITED STATES DEPARTMENT OF AGRICULTURE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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SUPPLEMENTAL APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

[UNPUBLISHED]

No. 99-3796

LOYD BREWER,
Appellant,
ALAN BREWER,
Intervenor-Appellant,
v.
TRAVIS O. LEE, HUSBAND; KATHLEEN D. LEE, WIFE;
THE FARM SERVICE AGENCY, BY ITS DIRECTOR,
MICHAEL DUNAWAY,
Appellees.

No. 00-1678

LOYD BREWER,
Plaintiff,
ALAN BREWER,
Intervenor-Appellant,
v.
TRAVIS O. LEE, HUSBAND; KATHLEEN D. LEE, WIFE;
FARM SERVICE AGENCY;
MICHAEL DUNAWAY, DIRECTOR,
Appellees.

Appeals from the United States District Court
for the Eastern District of Arkansas

Submitted: February 2, 2001
Filed: March 28, 2001

Before HANSEN, MORRIS SHEPPARD ARNOLD, and BYE, Circuit Judges.

PER CURIAM.

In case 99-3796, Loyd Brewer appeals the district court's[1] order granting defendants' motion to dismiss his quiet-title action. Because most of his claims were identical to those previously resolved in bankruptcy court and affirmed on appeal, or arose from the same nucleus of operative facts, we agree with the district court that res judicata barred all but one claim in the instant action. *See Costner v. URS Consultants, Inc.*, 153 F.3d 667, 673 (8th Cir. 1998) (elements of res judicata). We also agree with the court's conclusion that Brewer's remaining claim, adverse possession, failed as a matter of law. *See United States v. California*, 332 U.S. 19, 39-40 (1947) (rejecting argument that adverse possession applied against federal government). Accordingly, we affirm the judgment of the district court.

In case 00-1678, Alan Brewer appeals the district court's order granting defendants' motion to dismiss his complaint in intervention in his father's quiet-title action. Having carefully reviewed the record and the parties' submissions on appeal, we affirm the judgment of the district court. *See* 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

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[1] The Honorable James Maxwell Moody, United States District Judge for the Eastern District of Arkansas.